

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

## ORDER

Pending before the Court is Defendants Charles Daniels and William Hutchings (collectively “Defendants”) Motion for Summary Judgment, (ECF No. 42). Plaintiff Harold Edwards (“Plaintiff”) filed a Response, (ECF No. 56), to which Defendants filed a Reply, (ECF No. 62). Plaintiff then filed without Leave, a Sur-Reply, (ECF No. 62), to Defendants Reply.

Also pending before the Court is Defendants' Motion to Strike, (ECF No. 64).

For the reasons discussed below, the Court **GRANTS** Defendants' Motion for Summary Judgment and Motion to Strike.<sup>1</sup>

## I. BACKGROUND

This case arises out of Defendants' alleged indifference to Plaintiff's conditions of confinement.<sup>2</sup> (See Compl., ECF No. 6). According to Plaintiff, who is currently in custody at

<sup>1</sup> Under Local Rule 7-2(d), “[t]he failure of an opposing party to file points and authorities in response to any motion, exception a motion under Fed. R. Civ. P. 56 or a motion for attorney’s fees, constitutes a consent to the granting of the motion.” Plaintiff has not filed a response to Defendants’ Motion to Strike. Accordingly, pursuant to this District’s Local Rule 7-2(d), Defendants’ Motion to Strike Plaintiff’s Reply, (ECF No. 62), is granted.

<sup>2</sup> William Hutchings serves as the Warden (“Warden Hutchings”) at Southern Desert Correction Center (“SDCC”). (Hutchings Decl. ¶ 1, Ex. A to Errata Mot. Summ. J., ECF No. 43-1). Charles Daniels serves as a Director (“Director Daniels”) at SDCC. (Daniels Decl. ¶ 1, Ex. F to Mot. Summ. J., ECF No. 42-6); (Mot. Summ. J. 2:1–4, ECF No. 42).

1 Southern Desert Correctional Center (“SDCC”), Defendants are aware (because of the multiple  
 2 grievances he has filed), that his cell does not have fire sprinklers or smoke detectors. (*Id.* at 3).  
 3 Plaintiff further alleges that without these safety mechanisms, he could suffer severe burns or  
 4 death if there was a fire at the facility. (*Id.* at 4). Plaintiff’s prior grievances have been denied.  
 5 (*Id.* at 5). Prison officials have told Plaintiff that the prison was built prior to building codes  
 6 requiring sprinklers, and that the current building codes does not require that sprinklers be  
 7 installed until the next remodeling or addition to the building. (*Id.* at 6).

8 Plaintiff filed the instant action on September 3, 2020, asserting that pursuant to 42  
 9 U.S.C. § 1983, Defendants deliberate indifference to his conditions of confinement violated his  
 10 Eighth Amendment rights. (*See generally* Compl.). On June 8, 2022, Defendants filed the  
 11 instant Motion for Summary Judgment. (Mot. Summ. J. (“MSJ”), ECF No. 42).

12 **II. LEGAL STANDARD**

13 The Federal Rules of Civil Procedure provide for summary adjudication when the  
 14 pleadings, depositions, answers to interrogatories, and admissions on file, together with the  
 15 affidavits, if any, show that “there is no genuine dispute as to any material fact and the movant  
 16 is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). Material facts are those that  
 17 may affect the outcome of the case. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248  
 18 (1986). A dispute as to a material fact is genuine if there is a sufficient evidentiary basis on  
 19 which a reasonable fact-finder could rely to find for the nonmoving party. *See id.* “The amount  
 20 of evidence necessary to raise a genuine issue of material fact is enough ‘to require a jury or  
 21 judge to resolve the parties’ differing versions of the truth at trial.’” *Aydin Corp. v. Loral*  
 22 *Corp.*, 718 F.2d 897, 902 (9th Cir. 1983) (quoting *First Nat’l Bank v. Cities Serv. Co.*, 391 U.S.  
 23 253, 288–89 (1968)). “Summary judgment is inappropriate if reasonable jurors, drawing all  
 24 inferences in favor of the nonmoving party, could return a verdict in the nonmoving party’s  
 25 favor.” *Diaz v. Eagle Produce Ltd. P’ship*, 521 F.3d 1201, 1207 (9th Cir. 2008) (citing *United*

1 *States v. Shumway*, 199 F.3d 1093, 1103–04 (9th Cir. 1999)). A principal purpose of summary  
2 judgment is “to isolate and dispose of factually unsupported claims.” *Celotex Corp. v. Catrett*,  
3 477 U.S. 317, 323–24 (1986).

4 In determining summary judgment, a court applies a burden-shifting analysis. “When  
5 the party moving for summary judgment would bear the burden of proof at trial, it must come  
6 forward with evidence which would entitle it to a directed verdict if the evidence went  
7 uncontested at trial. In such a case, the moving party has the initial burden of establishing  
8 the absence of a genuine issue of fact on each issue material to its case.” *C.A.R. Transp.*  
9 *Brokerage Co. v. Darden Rests., Inc.*, 213 F.3d 474, 480 (9th Cir. 2000) (citations omitted). In  
10 contrast, when the nonmoving party bears the burden of proving the claim or defense, the  
11 moving party can meet its burden in two ways: (1) by presenting evidence to negate an  
12 essential element of the nonmoving party’s case; or (2) by demonstrating that the nonmoving  
13 party failed to make a showing sufficient to establish an element essential to that party’s case  
14 on which that party will bear the burden of proof at trial. *See Celotex Corp.*, 477 U.S. at 323–  
15 24. If the moving party fails to meet its initial burden, summary judgment must be denied and  
16 the court need not consider the nonmoving party’s evidence. *See Adickes v. S.H. Kress & Co.*,  
17 398 U.S. 144, 159–60 (1970).

18 If the moving party satisfies its initial burden, the burden then shifts to the opposing  
19 party to establish that a genuine issue of material fact exists. *See Matsushita Elec. Indus. Co. v.*  
20 *Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). To establish the existence of a factual dispute,  
21 the opposing party need not establish a material issue of fact conclusively in its favor. It is  
22 sufficient that “the claimed factual dispute be shown to require a jury or judge to resolve the  
23 parties’ differing versions of the truth at trial.” *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors*  
24 *Ass’n*, 809 F.2d 626, 631 (9th Cir. 1987). However, the nonmoving party “may not rely on  
25 denials in the pleadings but must produce specific evidence, through affidavits or admissible

1 discovery material, to show that the dispute exists,” *Bhan v. NME Hosps., Inc.*, 929 F.2d 1404,  
2 1409 (9th Cir. 1991), and “must do more than simply show that there is some metaphysical  
3 doubt as to the material facts.” *Orr v. Bank of America*, 285 F.3d 764, 783 (9th Cir. 2002)  
4 (internal citations omitted). “The mere existence of a scintilla of evidence in support of the  
5 plaintiff’s position will be insufficient.” *Anderson*, 477 U.S. at 252. In other words, the  
6 nonmoving party cannot avoid summary judgment by relying solely on conclusory allegations  
7 that are unsupported by factual data. *See Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989).  
8 Instead, the opposition must go beyond the assertions and allegations of the pleadings and set  
9 forth specific facts by producing competent evidence that shows a genuine issue for trial. *See*  
10 *Celotex Corp.*, 477 U.S. at 324.

11 At summary judgment, a court’s function is not to weigh the evidence and determine the  
12 truth but to determine whether there is a genuine issue for trial. *See Anderson*, 477 U.S. at 249.  
13 The evidence of the nonmovant is “to be believed, and all justifiable inferences are to be drawn  
14 in his favor.” *Id.* at 255. But if the evidence of the nonmoving party is merely colorable or is  
15 not significantly probative, summary judgment may be granted. *See id.* at 249–50. When a  
16 litigant is *pro se*, “we must consider as evidence in his opposition to summary judgment all of  
17 [his] contentions offered in motions and pleadings, where such contentions are based on  
18 personal knowledge and set forth facts that would be admissible in evidence, and where [he]  
19 attested under penalty of perjury that the contents of the motions or pleadings are true and  
20 correct.” *Jones v. Blanas*, 393 F.3d 918, 923 (9th Cir. 2004).

21 **III. DISCUSSION**

22 Defendants argue that they are entitled to summary judgment because Plaintiff cannot  
23 show that they were deliberately indifferent to a serious threat to Plaintiff’s safety. (MSJ 6:9–  
24 7:26). Defendants further contend that Plaintiff failed to present evidence which shows that  
25 Defendants personally participated or were even aware of any alleged constitutional violation.

1 (Id. 8:1–13). Plaintiff, in rebuttal, asserts that the inadequate fire safety system at SDCC poses  
2 an unreasonable threat of fire, and that Defendants were aware of this threat. (Resp. 7:24–  
3 16:24).

4 “The Eighth Amendment’s prohibition against cruel and unusual punishment protects  
5 prisoners not only from inhumane methods of punishment[,] but also from inhumane conditions  
6 of confinement.” *Morgan v. Morgensen*, 465 F.3d 1041, 1045 (9th Cir. 2006), *as amended on*  
7 *denial of reh’g* (Nov. 30, 2006). A prisoner bringing an Eighth Amendment conditions of  
8 confinement claim “must show (1) that the deprivation he suffered was objectively, sufficiently  
9 serious; and (2) that prison officials were deliberately indifferent to his safety in allowing the  
10 deprivation to take place.” *Id.* (internal quotation marks omitted). While “the routine  
11 discomfort inherent in the prison setting” is not enough to satisfy the first prong, “those  
12 deprivations denying the minimal civilized measures of life’s necessities are sufficiently grave  
13 to form the basis of an Eighth Amendment violation.” *Johnson v. Lewis*, 217 F.3d 726, 731 (9th  
14 Cir. 2000). “Prison officials have a duty to ensure that prisoners are provided adequate shelter,  
15 food, clothing, sanitation, medical care, and personal safety,” and the “circumstances, nature,  
16 and duration of a deprivation of these necessities must be considered in determining whether a  
17 constitutional violation has occurred.” *Id.*

18 The Court will first examine whether SDCC’s allegedly inadequate fire system  
19 constitutes an unconstitutional condition of confinement.

20 **A. Fire Safety System**

21 As stated, Defendants maintain that SDCC’s fire safety system does not place Plaintiff  
22 in an imminent risk of harm. (MSJ 6:9–20). In rebuttal, Plaintiff contends that SDCC’s fire  
23 safety system violates his Eighth Amendment rights because SDCC does not have fire  
24 sprinklers in every cell and that the call button in his cell is inoperative. (Resp. 2:15–20, 11:6–  
25

1 15). Without such measures, Plaintiff maintains he would be left helpless in the event of a fire.  
 2 (*Id.*).

3 The Eighth Amendment requires that prison officials provide adequate fire safety to  
 4 inmates. *See Hoptowit v. Spellman*, 753 F.2d 779, 784 (9th Cir. 1985) (“Prisoners have the right  
 5 not to be subjected to the unreasonable threat of injury or death by fire and need not wait until  
 6 actual causalities occur in order to obtain to obtain relief from such conditions.”). However,  
 7 “[w]hile fire and electrical codes can be helpful in determining whether a lack of fire safety can  
 8 constitute a violation of the Eighth Amendment, they are not determinative, and the Eighth  
 9 Amendment does not require that prisons meet fire and electrical codes.” *Johnson v. Texas Bd.*  
 10 *of Criminal Justice*, 281 F.3d App’x 319, 322 (5th Cir. 2008); *see Masonoff v. DuBois*, 899 F.  
 11 Supp. 782, 799 (D. Mass. 1995) (observing that although fire safety codes do not set the  
 12 constitutional minima, they do provide an indication of society’s evolving standard of  
 13 decency). “Unless objective assessment of prison conditions compels the conclusion that  
 14 inmates are being subjected to unreasonable safety risks, the federal courts must avoid  
 15 becoming enmeshed in the minutiae of prison operations, and should decline to second-guess  
 16 prison administrators in the operation of correctional facilities.” *Bell v. Wolfish*, 441 U.S. 520,  
 17 562, (1979).

18 Here, Plaintiff has failed to present evidence that fire safety measures at SDCC are  
 19 constitutionally inadequate. Plaintiff is correct that SDCC does not have fire sprinklers  
 20 installed in every cell. However, although the presence of sprinklers in cells may enhance  
 21 safety in a prison, the absence of sprinklers does not necessarily constitute an Eighth  
 22 Amendment violation. *See Kamara v. Admin’r, Bayside State Prison*, No. 17-cv-7383, 2018  
 23 WL 999670, at \*2 (D.N.J. Feb. 21, 2018) (“An allegation that a prison cell lacks fire sprinklers  
 24 or other fire precautions without more does not violate the Eighth Amendment.”); *Sowell v.*  
 25 *Fair*, 915 F.2d 1557, \*5 (1st Cir. 1990) (writing that a prisoner’s claim regarding inoperative

1 smoke detectors failed to state an Eighth Amendment claim); *Cutsinger v. Louisville Metro*  
 2 *Dept. of Corr.*, at \*4 (W.D. Ky. July 19, 2019) (“Simply alleging that cells are unsafe ‘with no  
 3 fire sprinkler or fire evacuation plan’ is conclusory, and without more, is insufficient to state a  
 4 claim under the Eighth Amendment.” (quoting *Deas v. Ingham Cty. Jail*, No. 1:18-cv-838,  
 5 2018 WL 3853521, at \*4 (W.D. Mich. Aug. 14, 2018)). Moreover, Defendants have produced  
 6 evidence that fire sprinklers were not required under state law when Plaintiff’s housing unit  
 7 was built and will not be required until the structure is renovated or an addition is built.<sup>3</sup> (MSJ  
 8 6:11–19). Additionally, Defendants explain that Plaintiff has since been placed in a unit which  
 9 does have sprinklers installed, thereby mitigating any threat of fire. (*Id.* MSJ 6:18); (*see*  
 10 Hutchings Decl. ¶ 8) (“[Plaintiff] is currently housed in Unit 8. The cells in Unit 8 have fire  
 11 suppression sprinklers.”).

12 Furthermore, outside of SDCC’s alleged failure to install sprinklers, Plaintiff does not  
 13 advance evidence that SDCC lacks a comprehensive fire safety plan. To the contrary,  
 14 Defendants have provided evidence of SDCC’s fire safety procedures. Specifically, Warden  
 15 Hutchings stated that Correctional Officers at SDCC are placed on “24 hour — 7 day a week  
 16 rotation” which enables Officers to “provide the necessary fire watch.”<sup>4</sup> (Hutchings Decl. ¶¶ 6–  
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18 <sup>3</sup> Under the Nevada Administrative Code, buildings owned by the State of Nevada must comply with the  
 19 building code that was in effect at the time of the building’s construction, but fire sprinklers must be installed  
 20 during the next remodeling of or addition to the building. *See N.A.C. 477.915(a)*. Plaintiff argues that it is unjust  
 21 that the Nevada Administrative Code exempts an institution from complying with current fire safety codes.  
 22 (Resp. 4:4–7). However, “[w]hile fire and electrical codes can be helpful in determining whether a lack of fire  
 23 safety can constitute a violation of the Eighth Amendment, they are not determinative, and the Eighth  
 24 Amendment does not require that prisons meet fire and electrical codes.” *Johnson*, 281 Fed. App’x at 322;  
 25 *French v. Owens*, 777 F.2d 1250, 1257 (7th Cir. 1986) (observing that “[t]he Eighth Amendment does not  
 26 constitutionalize the Indiana Fire Code. Nor does it require complete compliance with the numerous OSHA  
 27 regulations” and remanding to the district court to order only those remedies that are necessary to bring  
 28 conditions about constitutional minima).

29 <sup>4</sup> In response, Plaintiff argues that these correctional officers “stay[] inside the office in the Rotunda” for most of  
 30 their shifts, and only come out to do head count. (Resp. 8:26–9:5). Plaintiff appears to be arguing that these  
 31 Correctional Officers cannot provide the necessary “fire watch” because they lack the necessary vigilance. (*Id.*  
 32 9:1–5). However, Plaintiff’s argument is purely speculative. Defendants have provided evidence that  
 33 Correctional Officers equipped to identify and combat fires are constantly in Plaintiff’s housing unit.

1 7, Ex. A to Errata Mot. Summ. J., ECF No. 43-1). Warden Hutchings further explained that  
 2 “fire extinguishers and hoses are located throughout the housing units for safety of the inmates  
 3 and staff.”). (*Id.* ¶ 8); *see Wilson v. Brown*, 261 Fed. App’x 442, 1 (3d Cir. 2008) (per curiam)  
 4 (affirming district court’s decision that plaintiff failed to show evidence supporting his  
 5 allegation he was housed under conditions subjecting him to an unreasonable risk of fire where  
 6 the housing unit “was not equipped with sprinklers,” but the unit had “smoke detectors and fire  
 7 extinguishers”).

8 Accordingly, the Court finds that the evidence shows that the conditions of Plaintiff’s  
 9 confinement is not sufficiently serious to result in the denial of a civilized life’s necessities  
 10 under the Eighth Amendment.<sup>5</sup> Even assuming that Plaintiff was exposed to an unreasonable  
 11 risk of fire, however, Plaintiff has failed to show that Defendants personally participated in the  
 12 alleged constitutional violation.

13 **B. Personal Participation**

14 Defendants contend that “there is no evidence to suggest that “Warden Hutchings or  
 15 Director Daniels personally participated in [Plaintiff’s] alleged constitutional violation.” (MSJ  
 16 8:8–13). The Court agrees.

17 If an inmate demonstrates an objectively substantial risk of harm, he then must  
 18 demonstrate that prison officials were subjectively aware of that risk of harm and were  
 19 deliberately indifferent.” *Snow v. McDaniel*, 681 F.3d 978, 985 (9th Cir. 2012), *overruled on*  
 20 *other grounds by Peralta v. Dillard*, 744 F.3d 1076 (9th Cir. 2014). The official must both be  
 21 aware of facts from which he could infer a serious risk of harm to the inmate, and the official  
 22 must actually draw that inference. *Farmer v. Brennan*, 511 U.S. 825, 837 (1994). Once the  
 23 official is subjectively aware of the inmate’s risk of serious harm, he is deliberately indifferent

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 25 <sup>5</sup> The Court declines to examine any dispute surrounding the operability of the call button in Plaintiff’s cell in  
 light of the analysis set forth above.

1 if he disregards that risk. *Id.* “In essence, prison officials must have known of the plaintiff’s  
 2 risk of suffering serious harm and disregarded that risk.” *Duda v. Williams*, No. 2:16-cv-3044,  
 3 2019 WL 1062361, at \*3 (D. Nev. Mar. 5, 2019).

4       Here, Defendants have provided evidence which shows they were unaware of the  
 5 alleged constitutional violation prior to Plaintiff bringing the instant suit. Foremost, neither of  
 6 the Defendants were responsible for responding to Plaintiff’s grievances, nor did they review  
 7 the internal grievances Plaintiff filed. (*See* Ex. A to MSJ, ECF No. 42-1 Grievance No.  
 8 20063088893); (Hutchings Decl. ¶ 11); (Daniels Decl. ¶ 6, Ex. F to Mot. Summ. J., ECF No.  
 9 42-6). Moreover, Defendants explained that they were not made aware of Plaintiff’s grievances  
 10 until the initiation of the instant action. (Hutchings Decl. ¶¶ 4, 8); (Daniels Decl. ¶¶ 4–5).

11       In response, Plaintiff advances three arguments to demonstrate that Defendants knew of  
 12 the alleged constitutional violation. First, Plaintiff argues that Defendants were constructively  
 13 notified because he mailed a letter describing the alleged unconstitutional conditions to former  
 14 Warden Jerry Howell, Deputy Director Harold Wickham, and Governor Steve Sisolak. (Resp.  
 15 8:5–16). However, Plaintiff does not provide any evidence that these individuals disclosed or  
 16 discussed the letter with Defendants. Plaintiff cannot rely on conclusory allegations  
 17 unsupported by factual proof. *See Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989)

18       Second, Plaintiff argues that Warden Hutchings knew of the alleged constitutional  
 19 violation because he acknowledged in his Declaration that he reviewed the allegations in  
 20 Plaintiff’s Complaint. (Resp. 9:8–12); (Hutchings Decl. ¶ 5). However, this acknowledgement  
 21 does not show that Warden Hutchings retrospectively knew of the alleged constitutional  
 22 violation. Instead, it shows that Warden Hutching did not have knowledge of the alleged  
 23 constitution violation until the Complaint was filed.<sup>6</sup>

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 25       <sup>6</sup> Although Plaintiff did not include Director Daniels in this argument, this reasoning applies equally to him.

1 Finally, Plaintiff argues that Director Daniels personally participated in the alleged  
2 constitutional violation by virtue of his supervisory position at SDCC. (Resp. 8:11–18).  
3 However, a defendant is liable under 42 U.S.C. § 1983 “only upon a showing of personal  
4 participation by the defendant.” *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989). Plaintiff  
5 does not include specific factual allegations that would support that Director Daniels was  
6 personally involved in the alleged violations, and Plaintiff “cannot hold [Director] Daniels  
7 generally liable for every alleged violation that occurred simply because Daniels was the  
8 director at [SDCC].” *Harris v. Nevada*, No. 2:20-cv-02040, 2021 WL 4397554, at \*2 (D. Nev.  
9 Sept. 24, 2021); *Johnson v. Nevada Dept. of Corr.*, No. 2:21-cv-00306, 2021 WL 4432477, at  
10 \*2 (D. Nev. Sept. 24, 2021) (finding that a plaintiff cannot sufficiently show a § 1983 claim by  
11 alleging that defendants personally participated “based solely on their supervisory positions”).  
12 Accordingly, the Court finds that Defendants have shown that they did not personally  
13 participate in any alleged constitutional violation.

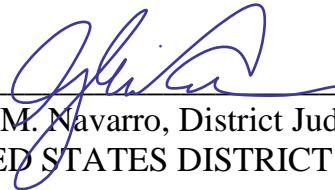
14 Therefore, Defendants are entitled to summary judgment on Plaintiff’s Eighth  
15 Amendment Claim.

16 **IV. CONCLUSION**

17 **IT IS HEREBY ORDERED** that Defendants’ Motion for Summary Judgment, (ECF  
18 No. 42), and Motion to Strike, (ECF No. 64), is **GRANTED**.

19 **IT IS FURTHER ORDERED** that the Clerk of Court shall close the case and enter  
20 judgment accordingly.

21 **DATED** this 1 day of November, 2022.

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Gloria M. Navarro, District Judge  
UNITED STATES DISTRICT COURT